

FOR ARGUMENT

No. 90-813 and No. 90-974

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In The
Supreme Court of the United States
October Term, 1990

HOUSTON LAWYERS' ASSN., et al.,

Petitioners,

v.

ATTORNEY GENERAL OF TEXAS, et al.,

Respondents.

LEAGUE OF UNITED LATIN
AMERICAN CITIZENS, et al.,

Petitioners,

v.

ATTORNEY GENERAL OF TEXAS, et al.,

Respondents.

On Writ Of Certiorari
To The United States Court Of
Appeals For The Fifth Circuit

AMICUS BRIEF OF THE STATES
OF TENNESSEE, ET AL.
IN SUPPORT OF RESPONDENTS

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QUESTION PRESENTED

Does Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, apply to dilution claims in the election of state court trial judges in multi-judge districts?

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AMICUS BRIEF OF THE STATES
OF TENNESSEE, ALABAMA, ARKANSAS, FLORIDA,
MICHIGAN, MINNESOTA, MISSOURI, MONTANA,
NORTH CAROLINA, NORTH DAKOTA, OKLAHOMA,
PENNSYLVANIA AND WASHINGTON
IN SUPPORT OF RESPONDENTS

INTEREST OF AMICI STATES

The amici states have a definite and substantial interest in the outcome of this case. According to a 1988 survey of the National Center for State Courts, there are thirty-nine states¹ in which state court judges are elected at either the appellate or general trial jurisdiction court level of both. Knoebel, *The Voting Rights Act: Are Its Provisions Applicable to the Judiciary?*, 13 State Court Journal 24 (1989). Application of Section 2 of the Voting Rights Act of state judicial elections involving multi-judge districts at the trial and appellate levels could affect the selection process for such offices in each of the amici states.

A summary of the number of affected states and judges at each court level is as follows:

<u>COURT LEVEL</u>	<u>NUMBER OF STATES</u>	<u>NUMBER OF JUDGES</u>
Courts of Last Resort		
Statewide	28	191
Multi-Judge Districts	4	20

¹ The thirty-nine states are as follows: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Washington, West Virginia, Wisconsin, and Wyoming.

<u>COURT LEVEL</u>	<u>NUMBER OF STATES</u>	<u>NUMBER OF JUDGES</u>
Intermediate Appellate Court		
Statewide	14	134
Multi-Judge Districts	10	320
General Trial Court		
Statewide	1	72
Multi-Judge Districts	37	5638

Id. at 27.² According to the National Center for State Courts, the percentages of state court judge, who could be affected in each of the these categories, are as follows: courts of last resort - 62%; intermediate appellate courts - 59%; and general trial courts - 72%. *Id.* at 28.

Each of the amici states falls into one or more of the above mentioned categories. The impact of Section 2 of the Voting Rights Act upon the method by which the citizens of the amici states select their state judiciary is an important issue pertaining to the relationship between the federal government and the states. Congressional incursion into the affairs of a state so basic as the structure of a state's judiciary should be cautiously considered and permitted by the federal judiciary only when there is a "clear and unequivocal expression" by Congress to do so. The amici states are in a unique position to aid this Court in making a determination as to whether there is a "clear statement" of Congressional intent to apply Section 2 of the Voting Rights Act to the election of state court judges.

² A complete list of the states and each category of the chart is set forth in the appendix to this brief.

STATEMENT OF THE CASE

The amici states adopt the statement of the facts as presented by the panel opinion in *League of United Latin American Citizens Council v. Clements*, 902 F.2d 293 (5th Cir. 1990) (LULAC) along with the statement of the facts as presented by the respondent.

ARGUMENT

I.

SECTION 2 OF THE VOTING RIGHTS ACT DOES NOT CONTAIN A CLEAR AND UNEQUIVOCAL EXPRESSION TO APPLY TO THE ELECTION OF STATE COURT JUDGES.

The issue in this case is whether state court judges are "representatives" within the meaning of results test in Subsection (b) of Section 2 of the Voting Rights Act. It is the position of amici states that state court judges are not "representatives". Therefore, a claim that the election of state court judges in multi-judge districts "results" in the dilution of minority voting strength cannot be brought under Section 2 of the Voting Rights Act.

There are a number of sources upon which to rely in determining the applicability of Section 2 to the election of state court judges. These sources include: (1) rules of statutory construction, (2) legislative history and debates of the Voting Rights Act, (3) executive construction of the Voting Rights Act, and (4) judicial construction of other sections of the Voting Rights Act. In their brief, the LULAC petitioners rely upon the latter three sources

while ignoring the first. Petitioners' Brief, p. 16 (legislative history), p. 18 (construction by the Attorney General), and p. 14 (judicial construction of Section 5).

There is a rule of statutory construction which has particular relevance to the applicability of Section 2 to the election of state court judges. This Court has held that if Congress intends to alter the "usual constitutional balance between states and the federal government", then it must make its intention to do so "unmistakably clear in the language of the statute."³ *Atascadero State Hospital v. Scanlon*, 473 U.S. 234, 242-43 (1985). Many of the recent cases which apply this principle involve immunity of states from suit under the Eleventh Amendment. *Dellmuth v. Muth*, 109 S.Ct. 2397 (1989) (Education of the Handicapped Act held not to abrogate the Eleventh Amendment); *Hoffman v. Connecticut Department of Income Maintenance*, 109 S.Ct. 2818 (1989) (Section 106 of the Bankruptcy Code did not abrogate the Eleventh Amendment); *Pennsylvania v. Union Gas Company*, 109 S.Ct. 2273

³ The purpose of requiring Congress to make a "clear statement" of applicability to a traditional state function is best stated in the following commentary:

By refusing to construe ambiguous legislation expansively, the Court can act to prevent Congress from avoiding hard questions of federal-state relations, and can thus increase the likelihood that Congress will give full attention to the interests of the states and of those groups whose interests parallel the states'.

Tribe, *American Constitutional Law* at 383 (1988).

(1989) (Comprehensive Environmental Response, Compensation and Liability Act of 1980 held to abrogate the Eleventh Amendment).

In addition, this rule of construction has been applied beyond the Eleventh Amendment context. *See Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947) (preemption of historic police powers of the states must be "clear and manifest" by Congress); *Pennhurst State School and Hospital v. Halderman*, 451 U.S. 1, 16 (1981) (congressional intention to impose conditions on the grant of federal monies must be "expressly articulated"); *South Dakota v. Dole*, 483 U.S. 203, 207 (1987) (where Congress conditions a state's receipt of federal funds, it must do so "unambiguously"). Most recently, this Court determined that neither a state nor a state official sued in his official capacity for money damages was a "person" within the meaning of 42 U.S.C. § 1983. *Will v. Michigan*, 109 S.Ct. 2304 (1989).⁴

The method by which each state's judiciary is selected is a fundamental part of a state's affairs. In many states, the method of selection of judges is set forth in the fundamental document organizing it, namely, the Constitution. *See generally, Constitutions of the United States: National and State* (June 1990) (Legislative Drafting

⁴ In the case of *Quern v. Jordan*, 440 U.S. 332 (1979), this Court held that Section 1983 did not abrogate the Eleventh Amendment. However, the Eleventh Amendment was not at issue in the *Will* case since the Section 1983 action was brought in state and not federal court. Nonetheless, this Court concluded that Congress did not provide a clear and unequivocal expression that states were intended to be persons within the meaning of 42 U.S.C. § 1983. *Will*, 109 S.Ct. at 2308.

Research Fund of Columbia University). Any congressional incursion into such an important state function must be clear and unequivocal. Otherwise, the delicate balance between state and federal relations will be unnecessarily tipped.

By applying this rule of statutory construction to Section 2 within the context of state court judge elections, a heavy burden is imposed upon the petitioners to show that Congress "clearly and unequivocally" intended Section 2 to apply to such elections. Thus, the issue is not just whether the Voting Rights Act might have been intended by Congress to apply to elections of state court judges, but whether Congress made a "clear and unequivocal expression" that Section 2 be applied to such elections.

The "results test" in Subsection (b) of Section 2 of the Voting Rights Act speaks in terms of a violation when "members [of a protected class] have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." The normal and ordinary usage⁵ of the term "representative" means members of a legislative body not a judge. The dictionary definition of the term representative is "one that represents another or others in a special capacity as one that represents a constituency as a member of a legislative or governing body." *Webster's Third International Dictionary*, 1926 (1986).

⁵ This Court has held on numerous occasions that in construing statutes, the ordinary and normal meaning of words is to be utilized. *Mills Music, Inc. v. Snyder*, 469 U.S. 153 (1985); *Aaron v. Securities and Exchange Commission*, 446 U.S. 680 (1980).

The function of a judge is not to represent a constituency in making decisions, but rather it is to interpret the law. As far back as our founding, that understanding of the function of the judiciary was expressed as follows:

Interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges as, a fundamental law. It therefore belongs to them to ascertain its meaning as well as the meaning of any particular act proceeding from the legislative body.

Federalist Papers, No. 78 at 467 (1961). Likewise, this Court affirmed a holding that judges are not "representatives" within the context of the doctrine of "one person, one vote". *Wells v. Edwards*, 347 F.Supp. 453 (N.D. La. 1972), *aff'd mem.*, 409 U.S. 1095 (1973). See also, Cole, *The Voting Rights Act and the Election of Judges*, 14 Am. J. Trial Adv. 1 (Summer 1990).

It is also important to the amici states for this Court to consider Article IV, Section 4 of the Constitution, which provides that the United States "shall guarantee to every state in this union a republican form of government", in defining the parameters of the term "representative" within the context of Section 2. The amici states contend that the Guarantee Clause is intended to ensure that states are protected in the structuring of their governments as long as such governments are republican in form. A commentator best stated this argument as follows:

[T]here is an express provision that might possibly be invoked in support of the proposition that the Constitution recognizes in the National Government a duty, running directly "to every state of this union" rather than to individuals, to

respect the states most fundamental structural choices as to how its people are to participate in their governance: Article IV, Section 4 expressly provides that the "United States shall guarantee to every state in the union a republican form of government." . . .

No doubt both Congress and the federal judiciary are empowered under the Civil War amendments to assure that a state's choices of governmental structure respect basic norms of equal protection. And no doubt many options exist, consistent with those basic norms, for implementing the ideals of representative democracy through the requirement of "republican form". But the authority to chose among those options – the authority to decide consistent with equal protection of the laws, how one people will represent themselves and participate in their own governance – seems the very essence of all self-government.

Tribe at 398.

A republican form of government requires that those individuals who enact laws must be the popularly elected representatives of the people. See *Duncan v. McCall*, 139 U.S. 449 (1891) (The distinguishing feature of a republican form of government is the right of the people to choose their own officers for governmental administration and pass their own laws by virtue of the legislative power reposed in representative bodies, whose legitimate acts may be said to be those of the people themselves.) On the other hand, a republican form of government does not require the popular election of its judiciary. U.S. Const., art. II, § 2 (members of the judiciary appointed by the President with the consent of the Senate). Likewise, judges in the state courts in this country are selected by a

number of different methods including: partisan elections, nonpartisan elections, gubernatorial appointments and legislative appointments.⁶

There is no dispute that states may chose to have their judges appointed by the governor or legislature and remain a republican form of government. Such an action would render the petitioners' claim moot since judges would no longer be elected. How can a judge be considered a "representative" of the people when his or her election by the people is not even required under the Guarantee Clause of the Constitution? In light of this analysis it is difficult to believe that the language of Section 2 contains a "clear and unequivocal" expression by Congress that the results test in Subsection (b) of Section 2 should apply to state judge elections.

Another point to consider is that raised by the American Judicature Society in its *amicus* brief, namely: the applicability of Section 2 of the Voting Rights Act to retention elections based upon merit selection.⁷ If one

⁶ Additionally, some states provide for a judicial merit selection panel to select a list of nominees from which a gubernatorial or legislative appointment is made subject to a retention election. Moreover, the following eleven states do not select their judiciary by popular election of any type: Connecticut, Delaware, Hawaii, Maine, Massachusetts, New Hampshire, New Jersey, Rhode Island, South Carolina, Vermont, and Virginia. A complete list of the methods by which states select their appellate and trial judges is set forth in the appendix of this brief.

⁷ The trend in recent years for the selection of state court judges is for a merit based selection process with a retention election. In fact, the following states elect one or more levels of

(Continued on following page)

follows the petitioners' argument to its logical conclusion, then retention elections for judges in multi-judge districts would be subject to Section 2 claims. Minority voters could potentially have a claim that their vote to retain or not retain judges in a particular district were diluted even though such judges were originally appointed under a merit based system and are not even opposed in the retention election.

Neither do the legislative debates surrounding the enactment of Section 2 provide any clear and convincing support for the applicability of that provision to the election of state court judges. All of the opinions of the Fifth Circuit, including the majority, concurring and dissent, relied upon the Congressional debates to bolster their positions. *League of United Latin American Citizens Council v. Clements*, 914 F.2d 620 at 628-29 (5th Cir. 1990) (en banc) (Gee, J., majority) at 639-42 (Higginbotham, J., concurring) at 656-58 (Johnson, J., dissenting). Yet, the best that can be said about the legislative debates with respect to the applicability of Section 2 to election of state judges is that they are inconclusive. Indeed, one commentator aptly stated the following:

Unfortunately for both proponents and opponents of permitting judicial election challenges under Section 2 of the Act, legislative history of Section 2 provides no real answers to its applicability. As noted by the *Mallory* and *Chisom* district courts, if Congress had intended

(Continued from previous page)

judges by that method: Alaska, Arizona, Colorado, Florida, Indiana, Iowa, Kansas, Missouri, Nebraska, Pennsylvania, South Dakota, Tennessee, Utah, and Wyoming.

to include judicial elections and amended Section 2, it left no trace of such intent in the language of that section or in the Senate Report. Although the term "representatives" is used synonymously in the Senate Report with "candidates" and "elected officials", terms that clearly refer to elected judges, the term "political subdivisions" embraces judicial elections once. Elsewhere in the history, the term "political subdivisions" is defined without the inclusion of "judicial districts."

Woollcott, *State Judicial Elections and the Voting Rights Act: Will Section 2 Protect Minority Voters?*, 23 Ga. L. Rev. 787, 797 (1988). See also, *West Virginia University Hospital, Inc. v. Casey*, 59 U.S.L.W. 4180 at 4184 (1991) (when language of a statute is unambiguous, the Court will not permit the clear meaning to be expanded or contracted by statements of individual legislators or committees during the enactment process). Thus, the Congressional debates do not provide any basis for the conclusion that Congress intended by a "clear and unequivocal expression" to apply Section 2 to the election of state judges.

The *LULAC* petitioners argue that the Voting Rights Act should be construed very broadly to remedy "all discrimination in voting." Petitioners' Brief, p. 19. In this regard, the petitioners allude to the circumstances of the enactment of Subsection (b) of Section 2. In 1980, this Court ruled in *Mobile v. Bolden*, 446 U.S. 55 (1980) that a claim under the Voting Rights Act required a finding of discriminatory intent to prove a vote dilution case. In 1982 Congress amended the Voting Rights Act in response to that decision by adding Subsection (b) of Section 2 to eliminate the intent requirement by explicitly imposing only a "results" test. From these circumstances,

the petitioners conclude "[i]t is inconceivable that Congress, while trying to strengthen Section 2, would at the same time have excluded from its reach an entire category of elections without someone saying so in the extensive legislative debates, the committee hearings, or the committee reports." Petitioners' Brief, p. 17.

Such an argument ignores the previously discussed rule of statutory construction that before Congress alters its usual constitutional balance between states and the federal governments it must make its intention to do so in unmistakably clear language in the statute. Similar arguments were raised by the petitioners in the *Will* case with respect to whether a state is a "person" within the meaning of 42 U.S.C. § 1983. While acknowledging that 42 U.S.C. § 1983 "provides a federal forum to remedy many deprivations of civil liberties," this Court in *Will* held that there was not a "clear and unequivocal expression" in either the language or the legislative history of § 1983 to indicate that states or state officials sued in their official capacity for money damages were intended to be "persons" within the meaning of that statute. *Will*, 109 S.Ct. at 2308. Likewise, before Congress reaches into such a fundamental area of state domain, such as the selection of state's judiciary, it must do so in a "clear and unequivocal manner."

The amici states do not dispute the fact that the Voting Rights Act is a constitutional method of enforcing the Fifteenth Amendment to ensure that all persons have the opportunity to vote in a free and fair manner. See *City of Rome v. United States*, 446 U.S. 156, 181 (1980). However, just as the Fifteenth Amendment was intended to protect voting rights, the Fourteenth Amendment was intended

to protect civil rights. Yet any incursion into state sovereignty vis-à-vis the enforcement of the Fourteenth Amendment through Congressional action must be "clear and unequivocal." This Court in the *Will* case held that 42 U.S.C. § 1983 was not such a "clear and unequivocal" expression of Congressional intent to intrude upon state sovereignty. Likewise, such a "clear statement" does not exist with respect to the applicability of Subsection (b) of Section 2 to the election of state court judges in multi-judge districts.

II.

TRIAL COURT JUDGES IN MULTI-JUDGE DISTRICTS ARE SINGLE MEMBER OFFICES NOT SUBJECT TO VOTE DILUTION CLAIMS UNDER SECTION 2 OF THE VOTING RIGHTS ACT.

The focus of amici states in this brief is the applicability of Subsection (b) of Section 2 of the Voting Rights Act to the election of state court judges. An additional argument raised by the respondents is that trial level judges are single member offices; therefore, the election of trial level judges in multi-judge districts does not violate Section 2 of the Voting Rights Act because there can be no dilution of minority voting strength since such judges are single member offices. The amici states agree with that position as an alternative to the main argument raised by the amici states in this brief. Such arguments have been fully raised by the respondents in their brief and Judge Higginbotham in his concurring opinion in this case. *LULAC*, 914 F.2d at 634 (Higginbotham, J., concurring). Therefore, the amici states see no need to provide any additional arguments on that point.

CONCLUSION

Based upon the foregoing authorities and analysis, the amici states urge this Court to affirm the decision of the United States Court of Appeals for the Fifth Circuit and hold that Section 2 of the Voting Rights Act does not apply to the election of state court judges.

Respectfully submitted,

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APPENDIX

**SURVEY OF STATES WHERE JUDGES ARE ELECTED
IN MULTI-JUDGE GEOGRAPHICAL AREAS***

**COURT OF LAST RESORT/JUSTICES
ELECTED STATEWIDE**

Alabama	Minnesota	Pennsylvania
Alaska	Missouri	South Dakota
Arizona	Montana	Tennessee
Arkansas	Nebraska	Texas
Colorado	Nevada	Utah
Georgia	New Mexico	Washington
Idaho	North Carolina	West Virginia
Iowa	North Dakota	Wisconsin
Kansas	Ohio	Wyoming
Michigan	Oregon	

(29 states, 191 judgeships)

**COURT OF LAST RESORT/MULTI-JUDGE
ELECTION DISTRICTS**

Illinois:	1 district,	2 justices
Louisiana:	1 district,	2 justices
Oklahoma:	2 districts,	7 justices
Mississippi:	3 districts,	9 justices

**INTERMEDIATE APPELLATE COURT/JUDGES
ELECTED STATEWIDE**

Alabama	Iowa	Oregon
Alaska	Kansas	Pennsylvania
Colorado	Minnesota	Tennessee
Georgia	New Mexico	Utah
Idaho	North Carolina	

**INTERMEDIATE APPELLATE COURT/MULTI-JUDGE
ELECTIONS DISTRICTS**

Arizona:	Both divisions	(18 judges)
Illinois:	All 5 districts	(34 judges)
Louisiana:	All 5 districts	(48 judges)
Michigan:	All 6 districts	(18 judges)

App. 2

Missouri:	All 3 districts	(29 judges)
Ohio:	All 12 districts	(58 judges)
Oklahoma:	All 6 districts	(12 judges)
Texas:	All 14 districts	(80 judges)
Washington:	3 of 9 districts	(10 judges)
Wisconsin:	All 4 districts	(13 judges)

**GENERAL JURISDICTION COURT/JUDGES
ELECTED STATEWIDE**

North Carolina (72 judges)

**GENERAL JURISDICTION COURT/MULTI-JUDGE
ELECTION DISTRICTS**

Alabama:	31 of 39 circuits (116 judges)
Alaska:	All 4 districts (29 judges)
Arizona:	10 of 15 counties (96 judges)
Arkansas:	21 of 24 districts (57 judges)
California:	42 of 58 counties (708 judges)
Colorado:	21 of 22 districts (109 judges)
Florida:	All 20 circuits (362 judges)
Georgia:	44 of 45 circuits (134 judges)
Idaho:	All 7 districts (33 judges)
Illinois:	All 22 districts, although 5 counties, have only 1 resident judge each (775 judges)
Indiana:	51 of 93 counties (168 judges, both superior and circuit court)
Iowa:	All 14 districts (142 judges)
Kansas:	29 of 31 districts (145 judges)
Louisiana:	36 of 42 districts (183 judges)
Maryland:	15 of 24 districts (100 judges)
Michigan:	29 of 55 circuits (170 judges)
Minnesota:	All districts (224 judges)
Mississippi:	Chancery, 13 of 20 districts (32 judges); circuit, 14 of 20 districts (34 judges)
Missouri:	16 of 44 circuits (275 judges)
Montana:	9 of 20 districts (25 judges)
Nebraska:	11 of 21 districts (39 judges)
Nevada:	7 of 9 districts (33 judges)
New Mexico:	12 of 13 districts (58 judges)

App. 3

New York:	Supreme, 12 of 12 districts (84 judges); county, 25 of 58 counties (80 judges)
North Dakota:	All 7 districts (26 judges)
Ohio:	81 of 88 counties (332 judges)
Oklahoma:	11 of 26 districts (56 judges), although each county has an associate district judge
Oregon:	17 of 20 districts (84 judges)
Pennsylvania:	47 of 67 counties (310 judges)
South Dakota:	All 8 circuits (37 judges)
Tennessee:	All 31 districts (128 judges)
Texas:	Unknown (although 197 of 375 judge- ships are being contested in the law- suit)
Utah:	4 of 8 districts (25 judges)
Washington:	23 of 30 districts (32 judges)
West Virginia:	23 of 30 circuits (53 judges)
Wisconsin:	41 of 72 counties (177 judges)
Wyoming:	8 of 9 districts (16 judges)

* Knoebel, *The Voting Rights Act; Are Its Provisions Applicable to the Judiciary*, 13 State Court Journal 24 (1989).

App. 4

SELECTION METHODS FOR STATE COURT JUDGES*

State and their Courts	Method of selection for full term	Method of retention	Method of selection to fill unexpired term
ALABAMA			
TRIAL: Circuit Court	Partisan election	Partisan election	Gubernatorial appt.
APPELLATE: Supreme Court	Partisan election	Partisan election	Gubernatorial appt.
Court of Criminal Appeals	Partisan election	Partisan election	Gubernatorial app.
Court of Civil Appeals	Partisan election	Partisan election	Gubernatorial appt.
ALASKA			
TRIAL: Superior Court	Gubernatorial appt. from judicial nominating commission	Retention election	See full term
APPELLATE: Supreme Court	Gubernatorial appt. from judicial nominating commission	Retention election	See full term
Court of Appeals	Gubernatorial appt. from judicial nominating commission	Retention election	See full term

App. 5

State and their Courts	Method of selection for full term	Method of retention	Method of selection to fill unexpired term
ARIZONA			
TRIAL Superior Court	Gubernatorial appt. from judicial nominating commission in 2 counties; partisan election in others	Retention election in 2 counties, partisan election in others	See full term
APPELLATE Supreme Court	Gubernatorial appt. from judicial nominating commission	Retention election	See full term
Court of Appeals	Gubernatorial appt. from judicial nominating commission	Retention election	See full term

App. 6

State and their Courts	Method of selection for full term	Method of retention	Method of selection to fill unexpired term
ARKANSAS			
TRIAL:			
Circuit Court	Partisan election	Partisan election	Gubernatorial appt.
Chancery & Probate Court	Partisan election	Partisan election	Gubernatorial appt.
APPELLATE:			
Supreme Court	Partisan election	Partisan election	Gubernatorial appt. until 12/31 following next general election then partisan election to fill remainder term
Court of Appeals	Partisan election	Partisan election	Gubernatorial appt. until 12/31 following next general election then partisan election to fill remainder term

App. 7

State and their Courts	Method of selection for full term	Method of retention	Method of selection to fill unexpired term
CALIFORNIA			
TRIAL:			
Superior Court	Nonpartisan election	Retention election	Gubernatorial appt.
APPELLATE:			
Supreme Court	Gubernatorial appt.	Retention election	Gubernatorial appt.
Courts of Appeal	Gubernatorial appt.	Retention election	Gubernatorial appt.
COLORADO			
TRIAL:			
District Court	Gubernatorial appt. from judicial nominating commission	Retention election	See full term
APPELLATE:			
Supreme Court	Gubernatorial appt. from judicial nominating commission	Retention election	See full term
Court of Appeals	Gubernatorial appt. from judicial nominating commission	Retention election	See full term

App. 8

State and their Courts	Method of selection for full term	Method of retention	Method of selection to fill unexpired term
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CONNECTICUT**TRIAL:**

Superior Court	Legislative appt. (Governor recommends from judicial nominating commission)	Legislative appt. (Governor recommends from judicial nominating commission)	Legislative appt. (Governor recommends from judicial nominating comm.)
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APPELLATE:

Supreme Court	Legislative appt. (Governor recommends from judicial nominating commission)	Legislative appt. (Governor recommends from judicial nominating commission)	Legislative appt. (Governor recommends from judicial nominating comm.)
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Appellate Court	Legislative appt. (Governor recommends from judicial nominating commission)
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App. 9

State and their Courts	Method of selection for full term	Method of retention	Method of selection to fill unexpired term
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DELAWARE

TRIAL:	Court of Chancery	Gubernatorial appt. from judicial nominating comm. with consent of Senate	Gubernatorial appt. from judicial nominating comm. with consent of Senate	Gubernatorial appt. from judicial nominating comm. with consent of Senate
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Superior Court	Gubernatorial appt. from judicial nominating comm. with consent of Senate	Gubernatorial appt. from judicial nominating comm. with consent of Senate	Gubernatorial appt. from judicial nominating comm. with consent of Senate
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APPELLATE:

Supreme Court	Gubernatorial appt. from judicial nominating comm. with consent of Senate	Gubernatorial appt. from judicial nominating comm. with consent of Senate	Gubernatorial appt. from judicial nominating comm. with consent of Senate
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App. 10

State and their Courts	Method of selection for full term	Method of retention	Method of selection to fill unexpired term
DISTRICT OF COLUMBIA			
TRIAL: Superior Court	Presidential appt. from judicial nominating comm. with confirmation by Senate	Judicial nominating commission or Pres. appt. with Senate confirmation	See full term
APPELLATE: Court of Appeals	Presidential appt. from judicial nominating commission with confirmation by Senate	Judicial nominating commission or Pres. appt. with Senate confirmation	See full term

App. 11

State and their Courts	Method of selection for full term	Method of retention	Method of selection to fill unexpired term
FLORIDA			
TRIAL: Circuit Court	Nonpartisan election	Nonpartisan election	Gubernatorial appt. from judicial nominating commission
APPELLATE: Supreme Court	Gubernatorial appt. from judicial nominating commission	Retention election	Gubernatorial appt. from judicial nominating commission
District Court of Appeal	Gubernatorial appt. from judicial nominating commission	Retention election	Gubernatorial appt. from judicial nominating commission

App. 12

State and their Courts	Method of selection for full term	Method of retention	Method of selection to fill unexpired term
GEORGIA			
TRIAL:			
Superior Court	Nonpartisan election	Nonpartisan election	Gubernatorial appt. from judicial nominating commission
APPELLATE:			
Supreme Court	Nonpartisan election	Nonpartisan election	Gubernatorial appt. from judicial nominating commission
Court of Appeals	Nonpartisan election	Nonpartisan election	Gubernatorial appt. from judicial nominating commission

App. 13

State and their Courts	Method of selection for full term	Method of retention	Method of selection to fill unexpired term
HAWAII			
TRIAL:			
Circuit Ct. of Family Ct.	Gubernatorial appt. from judicial nominating commission with consent of Senate	Judicial nominating commission reappointment	See full term
APPELLATE:			
Supreme Court	Gubernatorial appt. from judicial nominating commission with consent of Senate	Judicial nominating commission reappointment	See full term
Intermediate Ct. of App.	Gubernatorial appt. from judicial nominating commission with consent of Senate	Judicial nominating commission reappointment	See full term

App. 14

State and their Courts	Method of selection for full term	Method of retention	Method of selection to fill unexpired term
IDAHO			
TRIAL:			
District Court	Nonpartisan election	Nonpartisan election	Gubernatorial appt. from judicial nominating commission
APPELLATE:			
Supreme Court	Nonpartisan election	Nonpartisan election	Gubernatorial appt. may be from judicial nominating commission
Court of Appeals	Nonpartisan election	Nonpartisan election	Gubernatorial appt. may be from judicial nominating commission
ILLINOIS			
TRIAL:			
Circuit Court	Partisan election	Retention election	Court selection
APPELLATE:			
Supreme Court	Partisan election	Retention election	Court selection
Appellate Court	Partisan election	Retention election	Court selection

App. 15

State and their Courts	Method of selection for full term	Method of retention	Method of selection to fill unexpired term
INDIANA			
TRIAL:			
Superior Court	Partisan election	Retention election	Supreme Court appt. until gubernatorial appt. for remainder of term or until next general election
Circuit Court	Retention election	Partisan election	Supreme Court appt. until gubernatorial appt. for remainder of term or until next general election
APPELLATE:			
Supreme Court	Gubernatorial appt. from judicial nominating commission	Retention election	See full term
Court of Appeals	Gubernatorial appt. from judicial nominating commission	Retention election	See full term
Tax Court	Gubernatorial appt. from judicial nominating commission	Retention election	See full term

App. 16

<u>State and their Courts</u>	<u>Method of selection for full term</u>	<u>Method of retention</u>	<u>Method of selection to fill unexpired term</u>
IOWA			
TRIAL: District Court	Gubernatorial appt. from judicial nominating commission	Retention election	See full term
APPELLATE: Supreme Court	Gubernatorial appt. from judicial nominating commission	Retention election	See full term
Court of Appeals	Gubernatorial appt. from judicial nominating commission	Retention election	See full term

App. 17

<u>State and their Courts</u>	<u>Method of selection for full term</u>	<u>Method of retention</u>	<u>Method of selection to fill unexpired term</u>
KANSAS			
TRIAL: District Court	Gubernatorial appt. from judicial nominating commission in 17 districts; partisan election in 14 districts	Retention election in 17 districts; partisan election in 14 districts	See full term
APPELLATE: Supreme Court	Gubernatorial appt. from judicial nominating commission	Retention election	See full term
Court of Appeals	Gubernatorial appt. from judicial nominating commission	Retention election	See full term

App. 18

State and their Courts	Method of selection for full term	Method of retention	Method of selection to fill unexpired term
KENTUCKY			
TRIAL:			
Circuit Court	Nonpartisan election	Nonpartisan election	Gubernatorial appt. from judicial nominating commission
APPELLATE:			
Supreme Court	Nonpartisan election	Nonpartisan election	Gubernatorial appt. from judicial nominating commission
Court of Appeals	Nonpartisan election	Nonpartisan election	Gubernatorial appt. from judicial nominating commission

App. 19

State and their Courts	Method of selection for full term	Method of retention	Method of selection to fill unexpired term
LOUISIANA			
TRIAL:			
District Court	Nonpartisan election	Nonpartisan election	Supreme Ct. selection
APPELLATE:			
Supreme Court	Nonpartisan election	Nonpartisan election	Supreme Ct. selection
Courts of Appeal	Nonpartisan election	Nonpartisan election	Supreme Ct. selection
MAINE			
TRIAL:			
Superior Court	Gubernatorial appt.	Gubernatorial appt.	Gubernatorial appt.
APPELLATE:			
Supreme Judicial Court	Gubernatorial appt.	Gubernatorial appt.	Gubernatorial appt.

State and their Courts	Method of selection for full term	Method of retention	Method of selection to fill unexpired term
MARYLAND			
TRIAL: Circuit Court	Gubernatorial appt. from judicial nominating commission followed by partisan election	See full term	See full term
APPELLATE: Court of Appeals	Retention election	See full term	Gubernatorial appt. from judicial nominating commission with consent of Senate
Court of Special Appeals	Retention election	See full term	Gubernatorial appt. from judicial nominating commission with consent of Senate

State and their Courts	Method of selection for full term	Method of retention	Method of selection to fill unexpired term
MASSACHUSETTS			
TRIAL: Trial Ct. of Commonwealth	Gubernatorial appt. from judicial nominating commission with approval of Governor's Council	See full term	See full term
APPELLATE: Supreme Judicial Court	Gubernatorial appt. from judicial nominating commission with approval of Governor's Council	See full term	See full term
Appeals Court	Gubernatorial appt. from judicial nominating commission with approval of Governor's Council	See full term	See full term

State and their Courts	Method of selection for full term	Method of retention	Method of selection to fill unexpired term
MICHIGAN			
TRIAL: Circuit Court	Nonpartisan election	Nonpartisan election	Gubernatorial appt.
APPELLATE: Supreme Court	Nonpartisan election (Partisan primary)	Nonpartisan election	Gubernatorial appt.
Court of Appeals	Nonpartisan election	Nonpartisan election	Gubernatorial appt.
MINNESOTA			
TRIAL: District Court	Nonpartisan election	Nonpartisan election	Gubernatorial appt. from judicial nominating commission
APPELLATE: Supreme Court	Nonpartisan election	Nonpartisan election	Gubernatorial appt.
Court of Appeals	Nonpartisan election	Nonpartisan election	Gubernatorial appt.

State and their Courts	Method of selection for full term	Method of retention	Method of selection to fill unexpired term
MISSISSIPPI			
TRIAL: Circuit Court	Partisan election	Partisan election	Gubernatorial appt. from judicial nominating comm. until next general election
Chancery Court	Partisan election	Partisan election	Gubernatorial appt. from judicial nominating comm. until next general election
APPELLATE: Supreme Court	Partisan election	Partisan election	Gubernatorial appt. from judicial nominating committee

App. 24

State and their Courts	Method of selection for full term	Method of retention	Method of selection to fill unexpired term
MISSOURI			
TRIAL:			
Circuit Court	Gubernatorial appt. from judicial nominating commission in counties with nonpartisan election (5 metropolitan circuits)	Retention election for 5 metropolitan circuits, partisan election in 39 counties	Gubernatorial appt. in partisan cir. (39)
APPELLATE:			
Supreme Court	Gubernatorial appt. from judicial nominating commission	Retention election	See full term
Court of Appeals	Gubernatorial appt. from judicial nominating commission	Retention election	See full term

App. 25

State and their Courts	Method of selection for full term	Method of retention	Method of selection to fill unexpired term
MONTANA			
TRIAL:			
District Court	Nonpartisan election	Nonpartisan election	Gubernatorial appt. from judicial nominating commission
Workers Compensation Court	Gubernatorial appt. from judicial nominating commission	Gubernatorial appt. from judicial nominating commission	Gubernatorial appt. from judicial nominating commission
Water Court	Chief Justice appt. from judicial nominating commission	Chief Justice appt. from judicial nominating commission	Chief Justice appt. from judicial nominating commission
APPELLATE:			
Supreme Court	Nonpartisan election	Nonpartisan election (if unopposed, retention election)	Gubernatorial appt. from judicial nominating commission

State and their Courts	Method of selection for full term	Method of retention	Method of selection to fill unexpired term
NEBRASKA			
TRIAL: District Court	Gubernatorial appt. from judicial nominating commission	Retention election	See full term
APPELLATE: Supreme Court	Gubernatorial appt. from judicial nominating commission	Retention election	See full term

NEVADA

TRIAL: District Court	Nonpartisan election	Nonpartisan election	Gubernatorial appt. from judicial nominating commission
APPELLATE: Supreme Court	Nonpartisan election	Nonpartisan election	Gubernatorial appt. from judicial nominating commission

State and their Courts	Method of selection for full term	Method of retention	Method of selection to fill unexpired term
NEW HAMPSHIRE			
TRIAL: Superior Court	Gubernatorial appt. subject to approval by Executive Council	See full term	See full term
APPELLATE: Supreme Court	Gubernatorial appt. subject to approval by Executive Council	See full term	See full term

NEW JERSEY

TRIAL: Superior Court	Gubernatorial appt. with consent of Senate	Gubernatorial appt. with consent of Senate	Gubernatorial appt. with consent of Senate
APPELLATE: Supreme Court	Gubernatorial appt. with consent of Senate	Gubernatorial appt. with consent of Senate	Gubernatorial appt. with consent of Senate
Superior Ct., App. Div.	Chief Justice appt. of Superior Court Judge	Gubernatorial reappt. with consent of Senate	Chief Justice appt. of Superior Ct. Judge

App. 28

State and their Courts	Method of selection for full term	Method of retention	Method of selection to fill unexpired term
NEW MEXICO			
TRIAL: District Court	Partisan election	Partisan election	Gubernatorial appt.
APPELLATE: Supreme Court	Partisan election	Partisan election	Gubernatorial appt.
Court of Appeals	Partisan election	Partisan election	Gubernatorial appt.

App. 29

State and their Courts	Method of selection for full term	Method of retention	Method of selection to fill unexpired term
NEW YORK			
TRIAL: Supreme Court	Partisan election	Partisan election	Gubernatorial appt. with consent of Senate
County Court	Partisan election	Partisan election	Gubernatorial appt. with consent of Senate
APPELLATE: Court of Appeals	Gubernatorial appt. from judicial nominating commission with consent of Senate	Gubernatorial reappt.	Gubernatorial appt.
App. Divs. of Sup. Ct.	Gubernatorial appt. from list of Supreme Court justices	Gubernatorial reappt.	Gubernatorial appt.
App. Terms of Sup. Ct.	SCA appt. from lists of Supreme Court justices	SCA reappointment	SCA appt. from lists of Sup. Ct. Justices

App. 30

State and their Courts	Method of selection for full term	Method of retention	Method of selection to fill unexpired term
NORTH CAROLINA			
TRIAL: Superior Court	Partisan election (resident judges) Gubernatorial appt. (special judges)	Partisan election	Gubernatorial appt.
APPELLATE: Supreme Court	Partisan election	Partisan election	Gubernatorial appt.
Court of Appeals	Partisan election	Partisan election	Gubernatorial appt.
NORTH DAKOTA			
TRIAL: District Court	Nonpartisan election	Nonpartisan election	Gubernatorial appt. from judicial nominating commission
APPELLATE: Supreme Court	Nonpartisan election	Nonpartisan election	Gubernatorial appt. from judicial nominating commission or election

App. 31

State and their Courts	Method of selection for full term	Method of retention	Method of selection to fill unexpired term
OHIO			
TRIAL: Court of Common Pleas.	Nonpartisan election	Nonpartisan election	Gubernatorial appt.
APPELLATE: Supreme Court	Nonpartisan election	Nonpartisan election	Gubernatorial appt.
Court of Appeals	Nonpartisan election	Nonpartisan election	Gubernatorial appt.
OKLAHOMA			
TRIAL: District	Nonpartisan election	Nonpartisan election	Gubernatorial appt. from judicial nominating commission
APPELLATE: Supreme Court	Retention election	See full term	Gubernatorial appt. from judicial nominating commission
Court of Criminal Appeals	Nonpartisan election	Nonpartisan election	Gubernatorial appt. from judicial nominating commission
Court of Appeals	Nonpartisan election	Nonpartisan election	Gubernatorial appt. from judicial nominating commission

App. 32

State and their Courts	Method of selection for full term	Method of retention	Method of selection to fill unexpired term
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OREGON**TRIAL:**

Circuit Court	Nonpartisan election	Nonpartisan election	Gubernatorial appt.
Tax Court	Nonpartisan election	Nonpartisan election	Gubernatorial appt.

APPELLATE:

Supreme Court	Nonpartisan election	Nonpartisan election	Gubernatorial appt.
Court of Appeals	Nonpartisan election	Nonpartisan election	Gubernatorial appt.

App. 33

State and their Courts	Method of selection for full term	Method of retention	Method of selection to fill unexpired term
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PENNSYLVANIA**TRIAL:**

Court of Common Pleas	Partisan election	Retention election	Gubernatorial appt. from judicial nominating commission with consent of Senate
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APPELLATE:

Supreme Court	Partisan election	Retention election	Gubernatorial appt. from judicial nominating commission with consent of Senate
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Superior Court	Partisan election	Retention election	Gubernatorial appt. from judicial nominating commission with consent of Senate
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Commonwealth Court	Partisan election	Retention election	Gubernatorial appt. from judicial nominating commission with consent of Senate
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App. 34

State and their Courts	Method of selection for full term	Method of retention	Method of selection to fill unexpired term
RHODE ISLAND			
TRIAL:			
Superior Court	Gubernatorial appt. confirmed by Senate	N/A	Gubernatorial appt. confirmed by Senate
APPELLATE:			
Supreme Court	Legislative election	See full term	Legislative election
SOUTH CAROLINA			
TRIAL:			
Circuit Court	Legislative election	Legislative re-election	Legislative election
APPELLATE:			
Supreme Court	Legislative election	Legislative re-election	Legislative election
Court of Appeals	Legislative election	Legislative re-election	Legislative election

App. 35

State and their Courts	Method of selection for full term	Method of retention	Method of selection to fill unexpired term
SOUTH DAKOTA			
TRIAL:			
Circuit Court	Nonpartisan election	Nonpartisan election	Gubernatorial appt. from judicial nominating commission
APPELLATE:			
Supreme Court	Retention election	See full term	Gubernatorial appt. from judicial nominating commission

App. 36

State and their Courts	Method of selection for full term	Method of retention	Method of selection to fill unexpired term
TENNESSEE			
TRIAL:			
Circuit Court	Partisan election	Partisan election	Gubernatorial appt.
Chancery Court	Partisan election	Partisan election	Gubernatorial appt.
Criminal Court	Partisan election	Partisan election	Gubernatorial appt.
APPELLATE:			
Supreme Court	Partisan election	Partisan election	Gubernatorial appt.
Court of Appeals	Retention election	See full term	Gubernatorial appt. from judicial nominating commission
Court of Criminal Appeals	Retention election	See full term	Gubernatorial appt. from judicial nominating commission

App. 37

State and their Courts	Method of selection for full term	Method of retention	Method of selection to fill unexpired term
TEXAS			
TRIAL:			
District Courts	Partisan election	Partisan election	Gubernatorial appt. with consent of Senate
APPELLATE:			
Supreme Court	Partisan election	Partisan election	Gubernatorial appt. with consent of Senate
Court of Criminal Appeals	Partisan election	Partisan election	Gubernatorial appt. with consent of Senate
Courts of Appeals	Partisan election	Partisan election	Gubernatorial appt. with consent of Senate

App. 38

State and their Courts	Method of selection for full term	Method of retention	Method of selection to fill unexpired term
UTAH			
TRIAL:			
District Court	Gubernatorial appt. from judicial nominating commission with Senate confirmation	Retention election	See full term
APPELLATE:			
Supreme Court	Gubernatorial appt. from judicial nominating commission with Senate confirmation	Retention election	See full term
Court of Appeals	Gubernatorial appt. from judicial nominating commission with Senate confirmation	Retention election	See full term

App. 39

State and their Courts	Method of selection for full term	Method of retention	Method of selection to fill unexpired term
VERMONT			
TRIAL:			
Superior Court	Gubernatorial appt. from judicial nominating commission with Senate confirmation	Legislative election	See full term
APPELLATE:			
District Court	Gubernatorial appt. from judicial nominating commission with Senate confirmation	Legislative election	See full term
Supreme Court	Gubernatorial appt. from judicial nominating commission with Senate confirmation	Legislative election	See full term
VIRGINIA			
TRIAL:			
Circuit Court	Legislative appt.	Legislative reappt.	Legislative appt.
Supreme Court	Legislative appt.	Legislative reappt.	Legislative appt.
Court of Appeals	Legislative appt.	Legislative reappt.	Legislative appt.

App. 40

State and their Courts	Method of selection for full term	Method of retention	Method of selection to fill unexpired term
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WASHINGTON

TRIAL:			
Superior Court	Nonpartisan election	Nonpartisan election	Gubernatorial appt.
APPELLATE:			
Supreme Court	Nonpartisan election	Nonpartisan election	Gubernatorial appt.
Court of Appeals	Nonpartisan election	Nonpartisan election	Gubernatorial appt.

WEST VIRGINIA

TRIAL:			
Circuit Court	Partisan election	Partisan election	Gubernatorial appt.
APPELLATE:			
Supreme Court of App.	Partisan election	Partisan election	Gubernatorial appt.

App. 41

State and their Courts	Method of selection for full term	Method of retention	Method of selection to fill unexpired term
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WISCONSIN

TRIAL:			
Circuit Court	Nonpartisan election	Nonpartisan election	Gubernatorial appt. from judicial nominating commission
APPELLATE:			
Supreme Court	Nonpartisan election	Nonpartisan election	Gubernatorial appt. from judicial nominating commission
Court of Appeals	Nonpartisan election	Nonpartisan election	Gubernatorial appt. from judicial nominating commission

State and their Courts	Method of selection for full term	Method of retention	Method of selection to fill unexpired term
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WYOMING**—TRIAL:**

District Court	Gubernatorial appt. from judicial nominating commission	Retention election	See full term
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APPELLATE:

Supreme Court	Gubernatorial appt. from judicial nominating commission	Retention election	See full term
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* *State Court Organization 1987*, Tables 7 and 20 (1988) (National Center for State Courts) (the original tables contain footnotes explaining exceptions to the method of selection of judges in certain states which are not included in this Appendix for simplification purposes).